IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CITY OF BURLINGTON, a Washington municipal corporation, Appellant, v. SKAGIT COUNTY, a Washington municipal corporation; THE HOUSING AUTHORITY OF SKAGIT COUNTY, a Washington municipal corporation; and RASPBERRY RIDGE APT., a Washington limited partnership, Respondents.	)	No. 57967-3-I DIVISION ONE UNPUBLISHED FILED: August 21, 2006

COX, J. – The dispositive issue in this case is whether the superior court has jurisdiction under the Land Use Petition Act (LUPA) to hear the City of Burlington's challenge to the Skagit County resolution relating to Raspberry Ridge. We hold that the challenge is one properly within the jurisdiction of the Growth Management Hearings Board (GMHB). Accordingly, we affirm.

In 2002, the Housing Authority of Skagit County acquired approximately 23 acres of real property located to the east of the City of Burlington. Four acres of the property were used for the development of Raspberry Ridge, which is a 50 unit multifamily development for very low-income households whose members

are employed in agriculture. The remaining 19 acres to the north of Raspberry Ridge remain undeveloped.

In 2005, the Housing Authority of Skagit County proposed an expansion of Raspberry Ridge, an existing development, to include up to 75 additional multifamily rental units for very low-income farm workers and elderly persons with a history of agricultural employment. In September of that year, Skagit County held a public hearing to consider testimony regarding a request from the Housing Authority to invoke the Housing Cooperation Law, RCW 35.83. Under that statute, the Housing Authority requested waiver of certain land use regulations to facilitate the expansion of low income housing.

At the hearing, the City of Burlington expressed concern that the proposed development was outside of Burlington's urban growth area. Burlington also argued that the proposed project's on-site septic system may fail. Other testimony supported the development. The County passed Resolution No. R20050358, invoking the Housing Cooperation Law to waive specific portions of its development regulations.

Burlington filed a LUPA petition and complaint in the Skagit County Superior Court against Skagit County, the Housing Authority of Skagit County, and Raspberry Ridge. It sought review of the County's resolution under LUPA. Among other things, the petition sought a judgment that "the adoption of Resolution No. R20050358 [by the Skagit County Board of Commissioners was] contrary to the provisions of the Growth Management Act." The petition also

sought a judgment that the "Growth Management Act and the Housing Cooperation Act are in *pari materia*." Burlington also sought review under statutory and constitutional writs of certiorari.

The County and the Housing Authority moved to dismiss for lack of subject matter jurisdiction. The trial court granted the motion, concluding that the resolution was reviewable by the GMHB and was not a land use decision within the meaning of governing statutes.

Burlington appeals.

SUBJECT MATTER JURISDICTION

Burlington argues that the trial court erred in dismissing its petition for lack of subject matter jurisdiction. We disagree.

Whether a trial court has subject matter jurisdiction is a question of law that we review de novo.[1]

LUPA review generally applies to land use decisions, subject to certain exceptions. RCW 36.70C.030(1) provides:

> This chapter replaces the writ of certiorari for appeal of land use decisions and shall be the exclusive means of judicial review of land use decisions, ***except*** that this chapter ***does not*** apply to:
>
> (a) Judicial review of:
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> (i) Land use decisions made by bodies that are not part of a local jurisdiction;
>
> (ii***) Land use decisions of a local jurisdiction that are subject to review by a quasi-judicial body created by state law, such***

[1] Somers v. Snohomish County, 105 Wn. App. 937, 941, 21 P.3d 1165 (2001).

> ***as*** the shorelines hearings board, the environmental and land use hearings board, or ***the growth management hearings board***[.][2]

Assuming without deciding that the resolution before us is a "land use decision" within subsection (a)(ii) of the above statute, the question is whether it falls within the latter part of that subsection that applies where the GMHB has jurisdiction. More specifically, a central question here is whether the GMHB must determine whether the resolution violates the GMA.

RCW 36.70A.280 sets forth the scope of matters that are properly heard by the GMHB:

> (1) A growth management hearings board shall hear and determine only those petitions alleging either:
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> (a) That a state agency, ***county,*** or city planning under this chapter ***is not in compliance with the requirements of this chapter*** . . . .[3]

Here, Burlington sought relief from the superior court under LUPA from the County's resolution waiving several development regulations. We note that its petition expressly sought relief on the basis of the allegation that the waiver was contrary to the provisions of the GMA. We also note the petition expressly alleged that the Housing Cooperation Act and the GMA must be read together. The substance of Burlington's position both below and on appeal is that the proposed project represents urban growth in a rural area zoned agricultural and such a project violates the GMA. Both its pleadings and its arguments directly

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[2] (Emphasis added.)
[3] (Emphasis added.)

implicate the GMA. Thus, the claims of Burlington are matters that fall within the jurisdiction of the GMHB.

This case falls squarely within case authority deciding similar questions. In Caswell v. Pierce County, a developer applied for a conditional use permit to expand its existing mobile home park.[4] At the time of the application, the expansion was permissible under the County's Interim Urban Growth Area (IUGA) ordinance and a local zoning ordinance.[5] The hearing examiner approved the permit deciding that the County's local zoning ordinance took precedence over the County's "Interim Growth Management Policies and Comprehensive Plan."[6]

The adjacent property owners, sought relief from the hearing examiner's decision under LUPA in the superior court.[7] The trial court reversed, holding that the hearing examiner erred by failing to consider whether the expansion was contrary to the County's IUGA ordinance and the GMA.[8] This court held that the petitioners could not challenge the County's IUGA ordinance under LUPA, but rather, should have sought relief before the GMHB.[9] While Burlington attempts

[4] 99 Wn. App. 194, 195, 992 P.2d 534 (2000).

[5] Id.

[6] Id. at 196.

[7] Id.

[8] Id.

[9] Id. at 199.

to distinguish this case from the one before us, its attempts are unpersuasive.

In Somers v. Snohomish County, a developer applied for a preliminary plat approval of a subdivision called Cromwell Plateau.[10] Although the proposed subdivision was outside of the Monroe IUGA boundary, the County affirmed the hearing examiner's approval of the subdivision because it was within the County's R-20,000 zoning.[11] Neighboring landowners sought review of the subdivision approval in superior court under LUPA. They argued that the subdivision constituted "urban growth" contrary to the GMA. The trial court found that it had subject matter jurisdiction under LUPA and held that the approval violated the GMA.[12] This court reversed, holding that the Somers' claim was beyond the scope of LUPA and the GMHB had exclusive jurisdiction.[13] We reasoned that although the adjacent landowners did not challenge the Monroe IUGA, they challenged the underlying R-20,000 zoning ordinance on the ground that the subdivision violated the GMA.[14] Because of the nature of their challenge, the GMHB had jurisdiction to decide the matter, not the superior court.

These two cases control the disposition here. Burlington challenges

[10] 105 Wn. App. at 939.

[11] Id. at 939-40.

[12] Id. at 941.

[13] Id. at 945.

[14] Id.

Resolution No. R20050358 on the ground that it is contrary to the GMA. Its petition to the court expressly states that. Consideration of the substance of its arguments below and on appeal makes clear that it still challenges the resolution on the basis that waiver of the development regulations is contrary to the GMA. There is no conclusion to reach other than that the essence of Burlington's challenge is to matters properly first decided by the GMHB.

On appeal, Burlington asserts that this case does not concern the County's compliance with the GMA, but contends that the County's waiver of the development regulations for a site-specific project was illegal, and subject to LUPA review. Burlington cites Citizens of Mount Vernon v. City of Mount Vernon[15] to argue that the GMHB does not have jurisdiction to "render a decision on a specific development project."

That case is distinguishable. In Mount Vernon, the city approved a commercial planned unit development.[16] The Citizens of Mount Vernon sought review in superior court under LUPA alleging the project was inconsistent with the comprehensive plan and existing zoning ordinances. The supreme court determined that the Citizens complaint did not involve issues of GMA compliance, but rather involved "the effect of the comprehensive plan on specific land use decisions."[17] The supreme court held that the superior court had

[15] 133 Wn.2d 861, 947 P.2d 1208 (1997).

[16] Id. at 865.

[17] Id. at 868.

jurisdiction to hear the complaint because the GMHB cannot render a decision on a "specific development project."[18]

Unlike Mount Vernon, there is neither a pending application for a project permit nor a permit for the project.[19] Rather, at this stage, all that has been accomplished is the County's waiver of development regulations by its resolution that Burlington challenges. In short, there is no project-specific activity of the type that would preclude the GMHB from hearing this matter. It has the exclusive jurisdiction to do so.

The trial court also decided that the resolution was not a land use decision. Because of our resolution of the prior question, we need not reach that question.

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[18] Id.

[19] RCW 36.70B.020(4) states:

> "Project permit" or "project permit application" means any land use or environmental permit or license required from a local government for a project action, including but not limited to building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by critical area ordinances, site-specific rezones authorized by a comprehensive plan or subarea plan, but excluding the adoption or amendment of a comprehensive plan, subarea plan, or development regulations except as otherwise specifically included in this subsection.

WRITS

Burlington also argues that the superior court has jurisdiction to hear its challenge under statutory and constitutional writs of certiorari. Neither argument is persuasive.

In order to issue a statutory writ of review under RCW 7.16.030, the court must find: "(1) that an inferior tribunal (2) exercising judicial functions (3) exceeded its jurisdiction or acted illegally, and (4) there is no adequate remedy at law."[20]

Because Burlington had an adequate remedy at law by seeking review before the proper body, the GMHB, this case is not reviewable under a statutory writ of certiorari.

Burlington's alternative argument, that it is entitled to a constitutional writ, is also unpersuasive. Such a writ is not available to Burlington because this action was neither contrary to law nor arbitrary and capricious.[21] The County acted fully within its capacity as a legislative body to waive certain development regulations under the Housing Cooperation Act.

ATTORNEY FEES

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[20] Raynes v. City of Leavenworth, 118 Wn.2d 237, 244, 821 P.2d 1204 (1992).

[21] Pacific Rock Envtl. Enhancement Group v. Clark County, 92 Wn. App. 777, 782 n.3, 964 P.2d 1211 (1998) (quoting Saldin Sec., Inc. v. Snohomish County, 134 Wn.2d 288, 294, 949 P.2d 370 (1998) (A constitutional writ of certiorari is appropriate where "no other avenue of appeal is available and facts exist that, if verified, indicate the lower tribunal has acted in an illegal or arbitrary and capricious manner.")).

The Housing Authority requests an award of attorney fees and moves for sanctions asserting Burlington's appeal is frivolous. Because fees are not warranted in this case, we deny the request.

RCW 4.84.185 authorizes the trial court to award to the prevailing party reasonable expenses and attorney fees incurred in opposing a frivolous action.[22] "An action is frivolous if it 'cannot be supported by any rational argument on the law or facts.'"[23] The action must be frivolous in its entirety.[24]

CR 11 provides that a trial court may impose sanctions and award reasonable expenses and attorney fees incurred if a party files pleadings that are not grounded in fact or warranted by law or are filed for an improper purpose, such as to harass.[25] The purpose of CR 11 is to deter baseless filings, not filings that may have merit.[26]

Here, Burlington's appeal is not frivolous in its entirety. Moreover, we cannot say its filing had no merit.

We affirm the order granting the motion to dismiss.

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[22] Skimming v. Boxer, 119 Wn. App. 748, 756, 82 P.3d 707, review denied, 152 Wn.2d 1016 (2004).

[23] Jeckle v. Crotty, 120 Wn. App. 374, 387, 85 P.3d 931, review denied, 152 Wn.2d 1029 (2004) (quoting Clarke v. Equinox Holdings, Ltd., 56 Wn. App. 125, 132, 783 P.2d 82, review denied, 113 Wn.2d 1001 (1989)).

[24] Biggs v. Vail, 119 Wn.2d 129, 136, 830 P.2d 350 (1992).

[25] CR 11(a); Skimming, 119 Wn. App. at 754.

[26] Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 220, 829 P.2d 1099 (1992).

Cox, J.

WE CONCUR:

Dwyer, J.

Ellington, J.